

Keith D. Karnes, OSB # 03352
kkarnes@olsendaines.com
Olsen, Olsen & Daines, LLC
1599 State St.
P.O. Box 12829
Salem, OR 97309-0829
Telephone (503) 362-9393
Fax (503) 362-1375

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

JOHN WESLEY DAVIS,

Case No.

Plaintiff,

v.

RAY KLEIN, INC. dba
PROFESSIONAL CREDIT SERVICE

COMPLAINT FOR VIOLATIONS OF
FAIR DEBT COLLECTION
PRACTICES ACT AND INVASION
OF PRIVACY

Defendant.

JURY REQUESTED

JURISDICTION

1. Jurisdiction of this Court arises under 28 U.S.C. § 1331 and pursuant to 15 U.S.C. § 1692k(d), and pursuant to 28 U.S.C. § 1367 for pendent state law claims.
2. This action arises out of Defendant's violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq. ("FDCPA"), as well as other state law tort claims.
3. Venue is proper in this District because the acts and transactions occurred here, Plaintiff resides here, and Defendant transacts business here.

PARTIES

4. Plaintiff John Wesley Davis is a natural person who resides in the City of Keizer, County of Marion, State of Oregon, and is a “consumer” as that term is defined by 15 U.S.C. § 1692a(3).

5. Defendant Ray Klein, Inc. dba Professional Credit Service (hereinafter “PCS”) is a collection agency operating from an address of 2892 Crescent Ave., Eugene, OR 97408, and is a “debt collector” as that term is defined by 15 U.S.C. § 1692a(6).

FACTUAL ALLEGATIONS

6. On or About 2000-2003, Plaintiff was a patient at the Bend Memorial Clinic (“Clinic” or “the Clinic”) in Bend, Oregon.

7. While Plaintiff was a patient at the Clinic, the doctors misdiagnosed Plaintiff and Plaintiff needed substantial medical treatment solely due to the misdiagnosis.

8. Due to the Clinic’s misdiagnosis Plaintiff is completely and totally disabled.

9. Due to Plaintiff’s disability, Plaintiff’s only income is disability income from the Social Security Administration and some di minimis wages from a part time job.

10. In 2006 Plaintiff was contacted by Defendant in an attempt to collect a debt that Defendant alleges Plaintiff owes the Bend Memorial Clinic.

11. Plaintiff signed a sworn declaration that informed Defendant the facts regarding the underlying debt. Exhibit 1.

12. Despite Plaintiff’s notification that he was represented by an attorney, Defendant has contacted Plaintiff directly to collect the alleged debt.

13. As a direct and proximate result of Defendants’ actions Plaintiff has suffered actual damages

in the form of emotional distress, anger, anxiety, worry, and frustration, among other negative emotions.

TRIAL BY JURY

14. Plaintiff is entitled to and hereby respectfully demands a trial by jury. US Const. amend.

7. Fed. R. Civ. Pro. 38.

CAUSES OF ACTION

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 *et seq.*

15. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

16. The foregoing acts and omissions of Defendant constitute numerous and multiple violations of the FDCPA including, but not limited to, 15 U.S.C. § 1692c(a)(2), and 1692c(c).

17. As a result of Defendant's violations of the FDCPA, Plaintiff has suffered actual damages and is therefore entitled to actual damages pursuant to 15 U.S.C. § 1692k(a)(1); statutory damages in an amount up to \$1,000.00 pursuant to 15 U.S.C. § 1692k(a)(2)(A); and, reasonable attorney's fees and costs pursuant to 15 U.S.C. § 1692k(a)(3) from Defendant.

COUNT II.

INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

18. Plaintiff incorporates by reference all of the paragraphs of this Complaint as though fully stated herein.

19. Defendant intentionally interfered, physically or otherwise, with the solitude, seclusion and

or private concerns or affairs of the Plaintiff.

20. Defendant intentionally caused harm to Plaintiff's emotional well being by engaging in highly offensive conduct in the course of collecting a debt.

21. Plaintiffs had a reasonable expectation of privacy in Plaintiff's solitude, seclusion, and or private concerns or affairs.

22. The intrusion by Defendant occurred in a way that would be highly offensive to a reasonable person in that position.

23. As a result of such invasions of privacy, Plaintiff IS entitled to actual damages and punitive damages in an amount to be determined at trial from Defendant.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered against Defendant for:

COUNT I.

VIOLATIONS OF THE FAIR DEBT COLLECTION PRACTICES ACT

15 U.S.C. § 1692 *et seq.*

for an award of actual damages pursuant to 15 U.S.C. § 1692k(a)(1) against Defendant;

for an award of statutory damages of \$1,000.00 pursuant to 15 U.S.C. §1692k(a)(2)(A) against Defendant;

for an award of costs of litigation and reasonable attorney's fees pursuant to 15 U.S.C. § 1692k(a)(3) against Defendant;

COUNT II.

INVASION OF PRIVACY BY INTRUSION UPON SECLUSION

for an award of actual damages and punitive damages against Defendant suffered as a result of

the invasions of privacy in an amount to be determined at trial;

DATED

Olsen, Olsen & Daines, LLC

/s/ Keith D. Karnes
Keith D. Karnes, OSB # 03352
Attorney for Plaintiff

VERIFICATION OF COMPLAINT AND CERTIFICATION BY PLAINTIFF

I, John Wesley Davis, swear under penalty of perjury that to the best of my knowledge:

1. I am the Plaintiff in this civil proceeding.
2. I have read the above-entitled civil Complaint prepared by my attorneys and I believe that all of the facts contained in it are true, to the best of my knowledge, information and belief formed after reasonable inquiry.
3. I believe that this civil Complaint is well grounded in fact and warranted by existing law or by a good faith argument for the extension, modification, or reversal of existing law.
4. I believe that this civil Complaint is not interposed for any improper purpose, such as to harass any Defendant(s), cause unnecessary delay to any Defendant(s), or create a needless increase in the cost of litigation to any Defendant(s), named in the Complaint.
5. I have filed this civil Complaint in good faith and solely for the purposes set forth in it.
6. I have provided my attorneys with true and correct copies of each and every exhibit which has been attached to this Complaint.
7. I have not altered, changed, modified, or fabricated the attached exhibits, except that some of the attached exhibits may contain some of my own handwritten notations.

/s/ John W. Davis
John Wesley Davis

OLSEN, OLSEN & DAINES
Attorneys at Law

ERIC W. OLSEN*
LARS H. OLSEN
REX K. DAINES*
KEVIN D. SWARTZ*
KEITH D. KARNES*
DOUGLAS R. RICKS
DWAYNE R. MURRAY, of counsel

*Licenced in OR and WA
MAIN OFFICE
1599 STATE STREET
P.O. BOX 12829
SALEM, OR 97309-0829
TELEPHONE (503) 362-9393
FACSIMILE (503) 362-1375

PORTLAND OFFICE
6950 SW HAMPTON, STE 112
OR
7300 NE GLISAN
TELEPHONE (503) 274-4252

BEND OFFICE
141 NW GREENWOOD, STE 100
TELEPHONE (541) 330-5044

kkarnes@olsendaines.com
Direct Dial: (503) 485-8123
Direct Fax: (503) 485-8175

December 7, 2006

Professional Credit Service
1435 NE 4th Ave. Ste. C
Bend, OR 97701

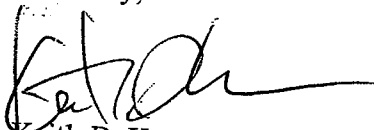
RE: John W. Davis
Acct No. 00745396

Ladies and Gentlemen:

I represent Mr. Davis. I believe that you are attempting to collect a debt that Mr. Davis does not owe. The medical bills you are attempting to collect were caused by the Bend Memorial Clinic's own negligence.

Further, Mr. Davis has no assets upon which you can collect. Enclosed is his sworn declaration establishing the same.

Sincerely,


Keith D. Karnes
Attorney

KDK:sr

1 I, John W. Davis, declare the following:

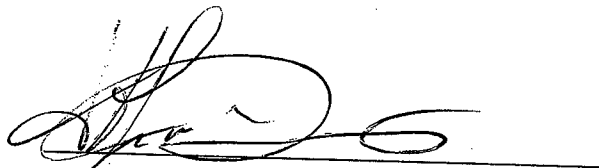
- 2 1. I was a patient at the Bend Memorial Clinic ("the clinic").
- 3 2. I originally went to the clinic with a medical problem that the clinic diagnosed
- 4 incorrectly.
- 5 3. Due to the incorrect diagnosis, I spent several weeks in the hospital.
- 6 4. The medical bills I incurred were due solely to the clinic's own mistakes.
- 7 5. Due to the clinic's errors, I am now permanently disabled.
- 8 6. The only bank accounts in my name contain my disability income from the Social
- 9 Security Administration.
- 10 7. I own no real estate.
- 11 8. My wages are less than \$170 per week.

12 I HEREBY DECLARE THAT THE ABOVE STATEMENT IS TRUE TO THE BEST OF

13 MY KNOWLEDGE AND BELIEF, AND THAT I UNDERSTAND IT IS MADE FOR USE AS

14 EVIDENCE IN COURT AND IS SUBJECT TO PENALTY FOR PERJURY:

15 DATED 12/6/06

16 

17 John W. Davis

18

19

20

21

22

23

24

25

26

27

28

DECLARATION

EXHIBIT 1

PAGE 2 OF 2

Olsen, Olsen & Daines, LLC
PO Box 12829
Salem, OR 97309-0829
Telephone (503) 362-9393
Facsimile (503) 362-1375